

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 08-11545

JOHN JOSEPH BROWN

LAUREL ANNE BROWN

Debtors

MARK A. WARSCO, TRUSTEE

Plaintiff

vs.

TROY J. JARVIS

GRANGE LIFE INSURANCE CO.

Defendants

PROC. NO. 08-1213

DECISION AND ORDER DENYING MOTION TO DISMISS

At Fort Wayne, Indiana, on March 4, 2009

By this adversary proceeding, the trustee seeks to avoid and recover an allegedly fraudulent transfer resulting from a change of beneficiary of a life insurance policy held by one of the debtors. The matter is before the court on a motion to dismiss filed, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, by the defendant, Grange Life Insurance Company. The motion argues that Grange simply fulfilled its duty to pay under Indiana law and that it cannot be liable to the trustee. As a result, Grange asks to be dismissed from the action.

The Supreme Court recently changed the standard governing a motion to dismiss. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1969 (2007). In determining whether a complaint satisfies the requirements of Rule (8)(a) of the Federal Rules of Civil Procedure (the

complaint shall contain “a short plain statement of the claim showing the pleader is entitled to relief”), it articulated a standard that is more rigorous than the one which previously held sway and which imposes two requirements. See, Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964-65.

First, the complaint must describe the claim in sufficient detail to give the defendant “fair notice of what the . . . claim is and the grounds upon which it rests” . . . Second, its allegations must plausibly suggest that the plaintiff has a right to relief raising the possibility above a “speculative level”; if they do not, the plaintiff pleads itself out of court. E.E.O.C. v. Concentra Health Services, Inc., 496 F. 3d 773, 776 (7th Cir. 2007) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964)(internal citations omitted). See also, In re Eisaman, 387 B.R. 219, 222 (Bankr. N.D. Ind. 2008); In re Schmucker, 376 B.R. 256, 258 (Bankr. N.D. Ind. 2007).

It is this standard – one of plausible suggestion, rather than possible success under any set of facts – by which the complaint must be measured.

The focus of Grange’s arguments is that the debtor/insured had a right to change his beneficiary and that it should be able to rely on that change, so that upon the insured’s death it had a duty to pay under Indiana law and that it simply fulfilled that duty. Its arguments are built upon the proposition that Indiana’s “public policy requires that . . . policy provisions pertaining to the naming and changing of beneficiaries will control except in extreme circumstances.” Bowers v. Kushnick, 774 N.E. 2d 884, 887 (Ind. 2002). The court is willing to recognize this proposition, but it must also recognize that “extreme circumstances” justify a departure from the general rule. This case is about the existence of extreme circumstances. The trustee notified Grange of the estate’s potential claim to the policy and its proceeds and advised it not to take any action or make any payment without consulting him. Despite this notice of a competing claim Grange chose to pay someone other than the trustee. These circumstances could very well justify allowing the trustee to recover from it. See e.g., 11 U.S.C. § 542(c) (an entity with notice or knowledge of the bankruptcy may not transfer property of the estate or pay a debt to an entity other than the trustee); In re U.S.A.

Diversified Products, Inc., 193 B.R. 868 (Bankr. N.D. Ind. 1995).

Grange could have avoided this litigation through an interpleader; paid the disputed funds to the clerk of the court and allowed the court determine which of the competing claimants was entitled to the money before it was distributed to anyone. It did not and, having chosen to take that responsibility upon itself, may now called upon to defend its actions. Its motion to dismiss is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court